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PART IV.

Section 1-A.

CENTRAL BILLS AND REPORTS OF SELECT COMMITTEES THEREON.

NOTIFICATION.

No. L.D. 1104—Legis. 3-51-27, dated Bangalore, 20th September 1951.

Ordered that the Displaced Persons (Debts Adjustment) Bill, 1951 (Central Bill No. 69 of 1951); published in the *Gazette of India*, Part II, Section 2, dated the 25th August 1951, be republished in the *Mysore Gazette*, for general information.

By Order of His Highness the Maharaja,
N. R. JAYA RAO,
Legal Remembrancer and
Secretary to Government,
Law Department.

The following Bill was introduced in Parliament on the 18th August, 1951 :—

BILL NO. 69 OF 1951.

A Bill to make certain provisions for the adjustment and settlement of debts due by displaced persons, for the recovery of certain debts due to them and for matters connected therewith or incidental thereto.

BE it enacted by Parliament as follows :—

CHAPTER I.
PRELIMINARY.

1. *Short title, extent, and commencement.*—(1) This Act may be called the Displaced Persons (Debts Adjustment) Act, 1951.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different States or for different parts thereof.

2. *Definitions.*—In this Act, unless the context otherwise requiries,—

(1) "company" means a company as defined in the Indian Companies Act, 1913 (VII of 1913), and includes a company deemed to be registered under that Act by reasons of any of the provisions contained in this Act ;

(2) "Companies Act" means the Indian Companies Act, 1913 (VII of 1913);

(3) "compensation" means any compensation paid, whether in cash or in kind, in respect of any immovable property in West Pakistan belonging to a displaced person under any general scheme arrived at in this behalf between the Government of India and the Government of Pakistan or framed by the Government of India ;

(4) "co-operative society" means a co-operative society registered under the Co-operative Societies Act, 1912 (II of 1912), or under any other law for the time being in force in any State for the registration of co-operative societies ;

(5) "Co-operative Societies Act" means the Co-operative Societies Act, 1912 (II of 1912), and includes any other law for the time being in force in any State relating to co-operative societies ;

(6) "debt" means any pecuniary liability, whether payable presently or in future, or under a degree or order of civil or revenue court or otherwise, or whether ascertained or to be ascertained, which—

(*a*) in the case of a displaced person who has left or been displaced from his place of residence in any area now forming part of West Pakistan, was incurred before he came to reside in any area now forming part of India ;

(*b*) in the case of a displaced person who, before and after the 15th day of August, 1947, has been residing in any area

now forming part of India, was incurred before the said date on the security of any property situate in the territories now forming part of West Pakistan :

Provided that where any such liability was incurred on the security of properties situate both in India and West Pakistan, the liability shall be so apportioned between the said properties that the liability in relation to each of the said properties bears the same proportion to the total amount of the debts as the value of each of the properties as at the date of the transaction bears to the total value of the properties furnished as security, and the liability, for the purposes of this clause, shall be the liability which is relatable to the property in West Pakistan ;

(*c*) is due to a displaced person from any other person (whether a displaced person or not) in the territories to which this act extends ;

and includes

any pecuniary liability incurred before the commencement of this Act by any such person as is referred to in this clause which is based on, and is solely by way of renewal of, any such liability as is referred to in sub-clause (*a*) or sub-clause (*b*) or sub-clause (*c*) :

Provided that in the case of a loan, whether in cash or in kind, the amount originally advanced and not the amount for which the liability has been renewed shall be deemed to be the extent of the liability,

but does not include

any pecuniary liability due under a decree passed after the 15th day of August 1947, by any court situate in West Pakistan or any pecuniary liability the proof of which depends merely on an oral agreement ;

(7) "displaced bank" means a banking company which, before the 15th day of August, 1947, carried on the business of banking, whether wholly or partially, in any area now forming part of West Pakistan and is declared to be displaced bank within the meaning of this Act by the Central Government by notification in the Official Gazette ;

(8) "displaced creditor" means a displaced person to whom a debt is due from any other person, whether a displaced person or not :

(9) "displaced debtor" means a displaced person from whom a debt is due or is being claimed ;

(10) "displaced person" means any person who, on account of the setting up of the Dominions of India and Pakistan, or on account of civil disturbances or the fear of such disturbances in any area now forming part of West Pakistan, has, after the 1st day of March, 1947, left, or been displaced from, his place of residence in such area and who has been subsequently residing in India, and includes any person who is resident in any place now forming part of India and who for that reason is unable or has been rendered unable to manage, supervise or control any immovable property belonging to him in West Pakistan, but does not include a displaced bank ;

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(11) "prescribed" means prescribed by rules made under this Act:

(12) "Tribunal" means any civil court specified under section 4 as having authority to exercise jurisdiction under this Act:

(13) "verified claim" means any claim registered under the Displaced Person (Claims) Act, 1950 (XLIV of 1950), in respect of which a final order has been passed under that Act relating to its verification and valuation;

(14) "West Pakistan" means the territories of Pakistan excluding the Province of East Bengal.

3. *Over-riding effect of Act, rules and orders.*—Save as otherwise expressly provided in this Act, the provisions of this Act and of the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, or in any decree or order of a court, or in any contract between the parties.

4. *Tribunals competent to exercise jurisdiction under this Act.*—The State Government may, by notification in the Official Gazette, specify any civil court or class of civil courts as the Tribunal or Tribunals having authority to exercise jurisdiction under this Act and may define the areas in which and the extent to which such jurisdiction may be exercised.

CHAPTER II.

Debt Adjustment Proceedings.

5. *Application by displaced debtors for adjustment of debts.*—(1) At any time within one year after the date on which this Act comes into force in any local area, a displaced debtor may make an application for the adjustment of his debts to the Tribunal within the local limits of whose jurisdiction he actually and voluntarily resides, or carries on business or personally works for gain.

(2) Every application by a displaced debtor shall contain the following particulars, namely:—

(*a*) the place where he resides;

(*b*) the trade, calling, profession or other employment in which he is now engaged and in which he was engaged in West Pakistan before he became a displaced person;

(*c*) his present average monthly income in India and his average monthly income in or from West Pakistan before he became a displaced person;

(*d*) the income-tax and super-tax, if any, to which he has been assessed for the two years immediately preceding his application;

(*e*) such other particulars as may be prescribed,

and shall be accompanied by the following schedules, namely:—

(*i*) a schedule containg full particulars of all his debts, whether owed jointly or individually, with the names and addresses of his creditors and joint-debtors, if any, so far as they are known to, or can by the exercise of reasonable care and diligence be ascertained by him;

(ii) a schedule of all his property, both movable and immovable (including claims due to him) which are not liable to attachment either under the provisions of this Act or of any other law for the time being in force, a specification of the values thereof and of the places where the same may be found :

(iii) a schedule of all his property, both movable and immovable (including claims due to him) which are liable to attachment under the provisions of this Act or of any other law for the time being in force ; and

(iv) a schedule of all properties in respect of which a claim has been submitted to the registering officer under the Displaced Persons (Claims) Act, 1950 (XLIV of 1950), and where any order has been passed in relation to the verification and valuation of the claim under that Act, with a certified copy of the order.

(3) All persons whose names are shown in any schedule as having claims against the displaced debtor and all persons whose names are shown as joint debtors shall be deemed to be the respondents to the application and there shall be filed along with the application as many copies of the application and as many envelopes and notices in the prescribed form duly addressed to the respondents as there are respondents.

6. *Rejection of applications in certain cases.*—Subject to the provisions contained in section 45, any application made under section 5 may be rejected if—

(a) it does not comply with any of the requirements of that section, or

(b) in the opinion of the Tribunal the applicant has failed to pursue his application with due deligence.

7. *Issue of notice.*—If the application is not rejected, the Tribunal shall, after filling in the date for hearing in the notices filed along with the application under section 5, cause them to be served on the responpents.

8. *Objection by respondents.*—In response to a notice under section 7, the respondent may show cause against the application by filing a written statement containing the objections to the application :

Provided that where he does not appear in person or through any authorised legal representative, the written statement may be sent by registered post, acknowledgment due, to the Tribunal after having been signed in the presence of any judicial officer or of a sub-registrar acting under the Indian Registration Act, 1908 (XVI of 1908), and duly attested by the judicial officer or the sub-registrar in token thereof.

9. *Proceeding after service of notice on respondents.*—(1) If there is a dipute as to the existence or the amount of the debt due to any creditor or the assets of any displaced debtor, the Tribunal shall decide the matter after taking such evidence as may be adduced by all the parties concerned and, subject to the other provisions contained in this Act, shall pass such decree in relation thereto as it thinks fit.

(2) If there is no such dispute or if the respondents do not appear or have no objection to the application being granted, the

Tribunal may, after considering the evidence placed before it and subject to the other provisions contained in this Act, pass such decree in relation thereto as it thinks fit.

10. *Claims by creditors against displaced debtors.*—Any person having a claim against a displaced debtor may make an application, in such form as may be prescribed, for the determination thereof to the Tribunal within the local limits of whose jurisdiction the displaced debtor actually and voluntarily resides, or carries on business, or personally works for gain, together with a statement of the debts owed to the creditor with full particulars thereof.

11. *Procedure on creditor's petition.*—(1) Where an application under section 10 has been made, the Tribunal shall cause notice thereof to be served on the displaced debtor calling upon him either to show cause, if any, against the application or to make an application on his own behalf under section 5.

(2) If, in response to a notice under sub-section (1), the displaced debtor make an application in accordance with the provisions of section 5, the Tribunal shall proceed further in the matter as if it had commenced with an application by the displaced debtor under section 5, and all the other provisions of this Act shall apply accordingly; but, if the displaced debtor does not choose to make any such application, the Tribunal shall, after considering such evidence, if any, as may be produced before it, determine the claim and, subject to the other provisions contained in this Act, pass such decree in relation thereto asit thinks fit.

12. *Objection by creditor to schedule of assets.*—(1) Any creditor of a displaced debtor may make an application to the Tribunal stating that the displaced debtor, who has made an application under section 5, or sub-section (2) of section 11, has concealed any part of his assets, and the Tribunal shall, after giving due notice thereof to the displaced debtor, determine the matter.

(2) If the Tribunal finds that the displaced debtor has wilfully and fraudulently omitted to include the assets in his application, the Tribunal may dismiss the application or refuse to allow to the displaced debtor any of the reliefs under this Act to which he would otherwise have been entitled or pass such other order in relation thereto as it thinks fit.

13. *Claims by displaced creditors against persons who are not displaced debtors.*—At any time within six months after the date on which this Act comes into force in any local area, any displaced creditor claiming a debt from any other person who is not a displaced person may make an application, in such form as may be prescribed, to the Tribunal within the local limits of whose jurisdiction he or the respondent or, if there are more respondents than one, any of such respondents, actually or voluntarily resides, or carries on business or personally works for gain, together with a statement of the debt owing to him with full particulars thereof.

14. *Procedure on displaced creditor's petition.*—(1) Where an application under section 13 has been made to the Tribunal, the Tribunal shall cause notice thereof to be given to the debtor, calling upon him to show cause, if any, against the application.

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(2) If there is a dispute as to the existence or the amount of the debt due, the Tribunal shall decide the matter, after taking such evidence as may be produced before it, and, subject to other provisions contained in this Act, pass such decree in relation thereto as it thinks fit.

(3) If there is no such dispute or if the debtor does not appear or has no cause to show, the Tribunal may, after considering the evidence placed before it, pass such decree in relation thereto as it thinks fit.

15. *Consequences of Application by displaced debtor.*—Where a displaced debtor has made an application to the Tribunal under section 5 or under sub-section (2) of section 11, the following consequences shall ensue, namely :—

(*a*) all proceedings pending at the date of the said application in any other civil court in respect of any debt to which the displaced debtor is subject, or with which any of his immovable property is encumbered (except proceedings by way of appeal or review or revision against decrees or orders) shall be stayed, and the records of all such proceedings other than those relating to appeals, reviews or revisions as aforesaid shall be transferred to the Tribunal and consolidated ;

(*b*) all attachments, injunctions, orders appointing receivers or other processes in execution made or issued by any such court and in force at the date of the said application in respect of any such debt shall cease to have effect and no fresh process in execution shall, except as hereinafter expressly provided, be made or issued ;

(*c*) no fresh suit or other proceeding (other than an appeal or review or revision against a decree or order) shall be instituted against the displaced debtor in any such court in respect of any debt mentioned by him in the relevent schedule to his application.

16. *Debts secured on immovable property.*—(1) Where a debt incurred by a displaced person is secured by a mortgage, charge or lien on the immovable property belonging to him in West Pakistan, the Tribunal may, for the purpose of any proceeding under this Act, require the creditor to elect to retain the security or abandon it.

(2) If the creditor elects to retain the security, he may apply to the Tribunal, having jurisdiction in this behalf as provided in section 10, for a declaration of the amount due under his debt.

(3) Where in any case, the creditor elects to retain his security, if the displaced debtor receives any compensation in respect of any such property as is referred to, in sub-section (1), the creditor shall be entitled—

(*a*) where the compensation is paid in cash, to a first charge thereon :

Provided that the amount of the debt in respect of which alone he shall be entitled to the first charge shall be that amount as bears to the total debt the same proportion as the compensation paid in respect of the property bears to the total value thereof as determined under the Displaced Persons (Claims) Act, 1950 (XLIV of 1950) and to that extent the debt shall be deemed to have been reduced ;

(b) where the compensation is by way of exchange of property, to a first charge on the property situate in India so received by way of exchange :

Provided that the amount of the debt in respect of which alone he shall be entitled to the first charge shall be that amount as bears to the total debt the same proportion as the value of the property received by way of exchange bears to the value of the original property as determed under the Displaced Persons (Claims) Act, 1950 (XLIV of 1950), and to that extent the debt shall be deemed to have been reduced.

(4) Notwithstanding anything contained in this section, where a debt is secured by a mortgage of agricultural lands belonging to a displaced person in West Pakistan and the mortgage was with possession, the mortgagee shall, if he has been allotted lands in India in lieu of the lands of which he was in possession in West Pakistan, be entitled to continue in possession of the lands so allotted untill the debt is satisfied from the usufruct of the lands or is redeemed by the debtor :

Provided that in either case the amount of the debt shall be only that amount as bears to the total debt the same proportion as the value of the lands allotted to the creditor in India bears to the value of the lands left behind by him in West Pakistan and to that extent the debt shall be deemed to have been reduced.

(5) Where a creditor abandons his security in West Pakistan, he shall be treated as an ordinary creditor in relation to the debt and the provisions of this Act shall apply accordingly.

17. *Debts secured on movable property.*—(1) Where a debt incurred by a displaced debtor is secured by the pledge of movable property belonging to him and such property is in the possession of the creditor, the creditor may realise the sum due to him by the sale of such property, after giving to the debtor reasonable notice of the sale and the surplus sale proceeds, if any, shall be refunded by him to the debtor.

(b) Where possession of such pledged property was given to the creditor when the debt was taken but the creditor is no longer in possession thereof and the pledged property is not available for redumption from the creditor, the creditor shall not be entitled to any decree or other relief against the displaced debtor in relation to the debt whether under this Act or under any other law.

18. *Claims against insurance companies.*—(1) Where any property in West Pakistan belonging to a displaced person was insured with any insurance company before the 15th day of August, 1947 against fire, theft or civil commotion and such property was burnt, demolished or looted at a time when the contract of insurance was in force, such company shall not be entitled to refuse payment of the sum due under any claim in relation thereto on the ground that—

(a) no report was lodged with the police, or

(b) the claim was not made to the company within the agreed time, or

(c) the disturbances in West Punjab were not civil commotion, or

(d) the displaced person has not fulfilled any other condition of the contract which is of a technical nature and which the Central

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Government has, by notification in the Official Gazette, specified as a condition of the contract for the purposes of this section, where such non-fulfilment is due to causes beyond the control of the displaced person and is connected with his being a displaced person ;

and any contract to the contrary, to the extent to which it is in contravention of the provisions of this sub-section, shall be deemed to have no effect.

(2) Where any property has been burnt, demolished or looted in the circumstances specified in sub-section (1), the Tribunal shall, in every proceeding where it is necessary to do so, determine respectively the amount of the loss, the amount for which the property was insured on the date of such loss, and the amount, if any, paid by the insurance company, and shall make a report thereof to such board or other authority as may be prescribed, and the prescribed board or other authority shall, after taking into account such matters as may be prescribed as being relevant thereto, and subject to any rules made in this behalf, in turn propose to the Tribunal the amount for which the claim against the insurance company shall be decreed, and the Tribunal shall pass a decree accordingly.

(3) The amount realised from the insurance company under any decree passed under sub-section (2) shall first be applied towards the satisfaction of the debt due from the displaced person, and the balance, if any, shall be refunded to the displaced person.

(4) An application under this section may be made, either by a displaced person, having a claim against the insurance company in the circumstances specified in sub-section (1) or by a displaced bank having an interest in the claim of any such displaced person, to the Tribunal within the local limits of whose jurisdiction the displaced person actually and voluntarily resides or carries on business or personally works for gain or, as the case may be, the displaced bank carries on business, for the determination of the amount due in respect of the claim in accordance with the provisions of sub-section (2).

(5) To every proceeding under sub-section (4), the insurance company and if the application is made by a displaced person, the displaced bank having any interest in his claim, and if the application is made by a displaced bank, the displaced person interested in the claim shall all be made parties.

(6) No application under this section shall be entertained in any case where no claim has been made to the insurance company, whether in the form, if any, required by the contract or in any other manner in respect of any such loss as is referred to in this section within one year after the date of this loss.

19. *Calls on shares in companies.*—(1) Where a company or a co-operative society has made any call upon a displaced person or a displaced bank in respect of any moneys remaining unpaid on any share held by him or it on the 1st day of March, 1947, in any company or co-operative society, as the case may be, and there has been a failure on the part of the shareholder to pay any moneys due in respect of such call, then, notwithstanding anything to the contrary contained in the Companies Act, or in the memorandum or articles of association or the co-operative Societies Act, no interest shall be payable in respect of any such moneys

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due and the company or the co-operative society, as the case may be, shall not be entitled to forfeit the share or any part thereof, and any forfeiture made before the commencement of this Act in respect of any share in the circumstances specified in this sub-section shall be deemed to have had no effect, and no person shall be deemed to have ceased to be a member of the company or co-operative society merely by reason of such forfeiture.

(2) Notwithstanding anything contained in the Companies Act, or in the memorandum or articles of association, or the Co-operative Societies Act, it shall be lawful for a displaced person or a displaced bank to apply to the company or the co-operative society, as the case may be, for the conversion of any partly paid-up share held by him or it in the company or society into such smaller number of fully paid-up shares as the society or company may have issued and in respect of which calls have already been made.

(3) If the company or the co-operative society refuses to comply with any such request as is contained in an application under sub-section (2), the tribunal may, on application made to it in this behalf and if satisfied that there is no cause for such refusal, issue a direction to the company or the co-operative society accordingly, and the company or society shall be bound to comply therewith.

(4) The provisions of this section shall have effect for a period of ten years from the 15th day of August 1947, and thereafter shall cease to have effect except as respects things done or omitted to be done.

20. *No calls to be made on displaced person or bank when company or co-operative society is in liquidation.*—(1) Where a company or a co-operative society is being wound up, no displaced person or displaced bank shall be called upon, notwithstanding anything to the contrary contained in the Companies Act or in the memorandum or articles of association or the Co-operative Societies Act, to make any contribution to the assets of the company or co-operative society, as the case may be, in respect of any share held by him or it in the company or society on the 15th day of August 1947.

(2) The provisions of this section shall have effect for a period of ten years from the 15th day of August 1947, and shall also apply in respect of any calls made and not satisfied before that date, and shall cease to have effect after the expiry of the said period except as respects things done or omitted to be done.

21. *Power to revise certain decrees and settlements.*—(1) Where before the commencement of this Act a decree has been passed by a civil court against, or a settlement has been entered into by, a displaced person or a displaced bank in respect of any debt, the Tribunal shall, on the application of such person or bank, revise it so as to bring it into accord with the provisions of this Act.

(2) In determining the amount due under any such decree or settlement, the Tribunal shall, accept as binding the findings of the court which passed the decree or the facts contained in the settlement, as the case may be, to the extent to which the findings or the facts are not inconsistent with the provisions of this Act :

Provided that the Tribunal shall not determine any claim under any such decree until any appeal or revision filed against it has been finally

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decided or the period allowed for any appeal therefrom has expired, and in all such cases the finding of the Tribunal shall be based on the final decree.

22. *Apportionment of join debts.*—Where a debt is due from a displaced person jointly with another person, the Tribunal shall, for the purposes of this Act, apportion the liability between them according to the following rules, namely :—

(*a*) if the liability of each debtor is defined, then according to the defined share of each ;

(*b*) if the debt was taken for any trade or business of the joint debtors, then according to the shares held by each of the joint debtors in the trade or business ;

(*c*) if the debt was taken not in any defined shares or for any trade or business in which the partners have any defined share, the debt shall be apportioned into as many parts as there are joint debtors, and each joint debtor shall be liable only for the part apportioned to him ;

(*d*) if one joint debtor is a displaced person and another is not, the sum apportioned to the non-displaced person shall not be a debt within the meaning of this Act and the creditor may in respect of such debt seek any remedy open to him in a civil court or otherwise ;

(*e*) where the relationship between the joint debtors is that of principal and surety, the principal alone shall, notwithstanding anything to the contrary contained in the Indian Contract Act, 1872 (IX of 1872), be liable to satisfy the liability in the first instance, but if the sum realised from the principal falls short of the sum due to the creditor, he may recover the balance from the surety.

23. *Simplified procedure in certain cases.*—Where any debt, or each of the debts in a proceeding involving the determination of more than one debt, does not exceed five thousand rupees,—

(*a*) it shall not be necessary for the Tribunal to take down the evidence of the witnesses in writing at length but the Tribunal, as the examination of each witness proceeds, shall make a memorandum of the substance of what he deposes and such memorandum shall be written and signed by the Tribunal and shall form part of the record ;

(*b*) the decision of the Tribunal need not contain more than the points for determination and the decision thereon.

24. *Presumption respecting registered documents.*—It shall be presumed until the contrary is proved that every document registered under the Indian Registration Act, 1908 (XVI of 1908) and produced before the Tribunal has been proved.

25. *Application of Act V of 1908.*—Save as otherwise expressly provided in this Act, all proceedings under this Act between party and party shall be regulated by the provisions contained in the Code of Civil Procedure, 1908 (Act V of 1908).

26. *Signing and verification of applications and written statements.*—Every application and the schedules, if any, attached thereto and every written statement filed before the Tribunal for any relief

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under this Act shall be signed and verified in the manner prescribed by the Code of Civil Procedure, 1908 (Act V of 1908), for the signing and verification of plaints.

27. *Production of documents.*—(1) Where any books of account or other documents in the possession of the applicant or respondent, as the case may be, are relied on for the purpose of any statement in the application or written statement, the books of account or other documents or, if so prescribed, relevant copies thereof certified in such manner as may be prescribed, shall be filed along with the application or written statement :

Provided that the Tribunal may for sufficient cause allow the books of account or other documents or certified copies of relevant entries in books of account or other documents, as the case may be, to be produced before it at any subsequent stage of the hearing.

(2) Subject to the provision contained in sub-section (1), a document which ought to be filed along with the application or written statement and which is not so filed shall not, without the leave of the Tribunal, be received in evidence at any later stage of the proceeding.

(3) If a document, which is in the possession or under the control of a displaced creditor, is not produced by him as required by this section, the document shall not be admissible in evidence against the displaced debtor in any proceeding for the recovery of the debt.

23. *Contents of decree.*—In all cases in which the Tribunal passes a decree on the application of a displaced person, it shall prepare a complete schedule of the creditors and of the assets and liabilities of the displaced person.

CHAPTER III.

RELIEFS.

29. *Cesser of accrual of interest.*—On and from the 15th day of August 1947, no interest shall accrue or be deemed to have accrued in respect of any debt owed by a displaced person, and no Tribunal shall allow any future interest in respect of any decree or order passed by it.

30. *Exemption from arrest.*—No displaced person shall be liable to arrest or imprisonment in execution of any decree for the recovery of any debt whether passed before or after the commencement of this Act.

31. *Further reliefs in the matter of attachment of property.*—Section 60 of the Code of Civil Procedure, 1908 (Act V of 1908) shall, in relation to the execution of any decree for a debt against a displaced person (whether passed before or after the commencement of this Act), have effect, as if—

(1) for clause (*c*), the following clauses had been substituted, namely :—

"(*c*) houses and other buildings (with the materials and the sites thereof and the land immediately appertaining thereto and necessary for their enjoyment) belonging to an agriculturist and not proved by the decree-holder to have been let out on rent or otherwise to any person other than the father,

mother, wife, son, daughtr, daughter-in-law, brother, sister or other dependant of the judgment-debtor or to have been left vacant for a period of one year or more;

(*cc*) milch animals, whether in milk or in calf, kids, animals used for the purpose of transport or draught cart and open spaces or enclosures belonging to an agriculturist and required for use in case of need for tying cattle, parking carts or stacking fodder or manure;

(*ccc*) one main residential house and other buildings attached to it (with the materials and the sites thereof and the land immediately appertaining thereto and necessary for their enjoyment) belonging to a judgment-debtor other than an agriculturist and occupied by him;";

(2) in clause (*i*), for the words "hundred rupees" the words "two hundred and fifty rupees" had been substituted;

(3) after clause (*p*), the following clauses had been inserted, namely:—

"(*q*) two-thirds of the agricultural produce of the judgment debtor;

(*r*) so much of any other property of the judgment-debtor as constitutes the means of his livelihood and as is likely, in the opinion of the court, to yield to him an income of not less than two hundred and fifty rupees a month;

(*s*) any loan advanced or agreed to be advanced by or on behalf of or out of the funds of the Central Government or a State Government, or any asset created from any such loan;".

32. *Scaling down of debts.*—(1) Where, on the application of a displaced debtor under section 5 or sub-section (2) of section 11, the Tribunal has determined the amount due in respect of each debt in accordance with the provisions of this Act, it shall proceed to determine the paying capacity of the debtor.

(2) If the paying capacity of the debtor is equal to or exceeds the aggregate sum of all the debts so determined (exclusive of any debt in respect of which the creditor has elected to retain the security in accordance with the provisions of section 16), the Tribunal shall pass a decree for the aggregate sum so determined, specifying the amount due to each creditor and shall allow repayment thereof in instalments, in accordance with the provisions of section 33, unless for reasons to be recorded it directs otherwise.

(3) If the paying capacity of the debtor is less than the aggregate sum referred to in sub-section (2), the Tribunal shall divide the decree into two parts and provide in the first part thereof (hereinafter referred to as the first part of the decree) that the sum equivalent to the paying capacity shall be realised from the assets of the debtor in India, and provide in the second part thereof (hereinafter referred to as the second part of the decree) that the balance shall be realised, subject to the provisions contained in sub-section (6), from any compensation which the debtor may receive:

Provided that if no such compensation is received, the balance shall be irrecoverable.

(4) A creditor who has elected to retain his security under section 16 shall have no right to realise any money due to him from the assets

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of the debtor in India, but nothing in this sub-section shall affect any of the rights given to him by section 16.

(5) A creditor shall have the right at any time at least six months before the receipt by the debtor of compensation to apply that the whole or the balance of the first part of the decree, in so far as any debt due to him is concerned, may be added to the second part of the decree, and thereupon he shall have no right to realise any money from the assets of the debtor in India.

(6) For the purposes of this Act, the amount payable from the compensation for the satisfaction of the second part of the decree shall be that amount as bears to the aggregate amount of all the debts in the second part of the decree [including therein any sum added to it under sub-section (5) and the sum determined in favour of the secured creditor who has not abandoned his security in the manner specified in the proviso to clause (*a*) of sub-section (3) of section 16] as the compensation in respect of the property of the debtor payable to him under the Displaced Persons (Claims) Act, 1950 (XLIV of 1950) bears to the verified claim; and the balance of the compensation, if any, shall be refunded to the displaced debtor.

(7) Every instalment paid by the displaced debtor in respect of the first part of the decree and any sum payable from the compensation in accordance with sub-section (6) shall be distributed rateably amongst the decree-holders, if more persons than one are entitled thereto:

Provided that the secured creditor who has not abandoned his security under section 16 shall be entitled to a prior charge on the amount payable from the compensation.

(8) Where a displaced person receives compensation by way of exchange of property, then, subject to the prior charge, if any, of a creditor under section 16, the aggregate sum payable in respect of the second part of the decree shall be a second charge upon the property received by way of exchange, but the amount of the second charge shall be that amount as bears to the total sum the same proportion as the value of the property received by way of exchange bears to the value of the original property verified and valued under the Displaced Persons (Claims) Act, 1950 (XLIV of 1950).

(9) Where a displaced person makes a default in the payment of any instalment fixed in respect of the first part of the decree or does not pay the amount determined in accordance with sub-section (4) of section 16 or sub-section (8) of this section for which the first or the second charge may have been created upon the property received by way of exchange, the creditor may apply for the execution of the decree by the attachment and sale of the attachable assets of the judgment-debtor or by the sale of the property obtained by way of exchange upon which the charge has been created, as the case may be, and the amount realised by such execution shall be distributed rateably among the dercee-holders:

Provided that nothing contained in this sub-section shall affect the rights of any charge-holders.

(10) For the purposes of this Act, where the compensation is paid in cash, the amount which shall be available for purposes of satisfaction of the debts in the second part of the decree shall in no case exceed seventy-five per cent of the amount of such compensation; and where it is by way of exchange of property, the extent of the property which shall be available for the said purposes shall in no case exceed seventy-five per cent in value of such property.

Explanation.—In this section the expression "paying capacity" means the aggregate of the market value of all the attachable assets in India of the displaced debtor plus the income which is likely to accrue to him for the next three years succeeding, excluding from the computation of such income a sum calculated at the rate of two hundred and fifty rupees a month.

33. *Matters to be taken into account in directing payment by instalments.*—(1) In directing payment of any sums by instalments under the first part of the decree, the Tribunal shall take into account among other matters—

(*a*) the present income of the displaced debtor from all sources and the income that is likely to accrue to him in future;

(*b*) the size of the family dependent upon him for the ordinary necessaries of life and the expenditure likely to be incurred for the education and marriage of the children of the displaced person dependent upon him.

(2) where a displaced creditor is a minor, or a widow or a person who, by reason of any physical disability, is permanently disabled from earning his livelihood, the Tribunal may direct that any instalment payable to him or her shall be twenty-five per cent higher than what would otherwise have been directed to be paid, and where it does so, it shall also direct that the instalments of other decree-holders shall be proportionately reduced.

34. *Variation of maintenance allowances.*—Where a displaced debtor has been ordered to pay a monthly allowance to any person for his maintenance under any decree or order of a court, or is liable to pay such allowance under any agreement voluntarily entered into, the rate at which such allowance is payable may be varied by the Tribunal on application made to it in this behalf, if in view of the change in the circumstances of the displaced debtor, the Tribunal thinks that such variation is necessary, and such variation shall have effect, for such period as the Tribunal may direct, notwithstanding anything in any decree, ordered or agreement to the contrary.

35. *Taxation of Lawyer's fees.*—Not more than one-half of the fees payable as costs on taxation in respect of fees to a legal practitioner according to the rules for the time being in force in the territory in which the Tribunal is hearing any proceeding under this Act shall be allowed as fees of the legal practitioner, under any decree passed against displaced person in any proceeding under this Act.

36. *Extension of period of limitation.*—Notwithstanding anything contained in the Indian Limitation Act, 1908 (IX of 1908) or in any special or local law or in any agreement,—

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(*a*) any suit or other legal proceeding in respect whereof the period of limitation was extended by section 8 of the Displaced Persons (Institution of Suits) Act, 1948 (XLVII of 1948), and

(*b*) any suit or other legal proceeding for the enforcement of a claim against an insurance company not falling within the provisions of clause (*a*) in respect whereof the cause of action has arisen, whether wholly or in part, in the territories now situate in West Pakistan and the institution of the suit or other legal proceeding has become barred by reason of a condition in the contract, which, but for the condition, would have been governed by the provisions contained in clause (*a*),

may be instituted at any time within one year from the commencement of this Act.

37. *Curtailment of period of limitation, for execution of certain decrees.*—Notwithstanding anything contained in section 48 of the Code of Civil Procedure, 1908 (Act V of 1908), or in any other law for the time being in force, no order for the execution of a decree in respect of a debt against a displaced person shall be made upon an application presented after the expiration of—

(*a*) in the case of decree passed before the commencement of this Act, six years from such commencement;

(*b*) in the case of decrees passed after the commencement of this Act, six years from the date of the decrees;

(*c*) in the case of decrees directing payment of money to be made at prescribed intervals or on certain dates, six years from the date of default in making the payment in respect of which the decree-holder seeks to have the decree executed:

Provided that nothing in this section shall be construed as extending the limit of time for execution as provided in section 48 of the said Code for an application for the execution of a decree passed before the commencement of this Act.

38. *Sale of immovable property in execution.*—(1) Where in the execution of any decree for the recovery of a debt against a displaced person his immovable property is sought to be sold, the court executing the decree shall, in the first instance, determine the market value of the property and, if the value so determined is less than or equal to the amount of the decree together with the proportionate amount of any prior encumbrance, the court shall transfer the property to the decree-holder.

(2) If the value determined under sub-section (1) is greater than the amount of the decree together with the proportionate amount of any prior encumbrance, the court shall determine the portion of such property the value of which is equal to the amount of the decree with the proportionate amount of such prior encumbrance, and may, if it is reasonable or convenient to do so, transfer that portion to the decree-holder.

(3) Where any property is transferred under the provisions of this section to the decree-holder, the decree shall be deemed to be satisfied to the extent of the value of the property so transferred:

Provided that if the decree-holder does not desire to take the property or, in the opinion of the court, it is not reasonable or convenient

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to transfer the property to him, the property may be sold by public auction, but irrespective of the price fetched at the public auction the market value of the property as determined under this section (and not the amount payable to the decree-holder out of the sale proceeds of the public auction) shall be deemed to be the amount which has been paid to the decree-holder in respect of the decree, and satisfaction thereof shall be entered accordingly.

39. *Encouragements of settlements.*—If the displaced debtor and the creditor or, where there are more creditors than one, such number thereof as hold more than sixty per cent of the debts due from the displaced debtor enter into an agreement for the adjustment of the liabilities, the Tribunal shall, if an application is made to it in this behalf after giving due notice to the other creditors affected, adjust the remaining debts accordingly if the terms of the agreement are just and fair, and pass a decree accordingly.

CHAPTER IV

APPEALS, REVISIONS AND EXECUTIONS.

40. *Appeals from decrees or orders.*—(1) Save as otherwise expressly provided in this Act, no decree or order of the Tribunal or of the court executing any decree of the Tribunal shall be questioned in any court by way of appeal or revision.

(2) Subject to the provisions contained in section 41, an appeal shall lie from the following decrees or orders of the Tribunal or of any court executing any decree of the Tribunal to the High Court within the limits of whose jurisdiction the Tribunal is situate or, as the case may be, to which it is subordinate, namely :—

(*a*) a decree passed in respect of the claim of a displaced creditor against a displaced person, a displaced bank or any other person who is not a displaced person or in respect of the claim of a creditor who is not a displaced person against a displaced person or a displaced bank ;

(*b*) a final order passed under section 6, section 12 section 18, section 21, section 22, section 32, section 34, section 38 or section 39;

(*c*) a final order of the court executing any decree under this Act relating to the execution, discharge or satisfaction of a decree relating to a debt passed against a displaced person or a displaced bank, whether before or after the commencement of this Act.

41. *General provisions relating to appeals.*—Where the amount or value of the subject-matter in dispute on appeal is five thousand rupees or more, an appeal shall lie to the High Court from any decree or order of the Tribunal.

42. *Parties to appeals.*—For the purpose of any appeal under this Act, it shall be sufficient if only such persons as, in the opinion of the

appellant, are necessary parties to the appeal for the purpose of determining the real questions in controversy between them, are implied as respondents to the appeal :

Provided that where it appears to the High Court at the hearing that any person who was a party to the proceeding before the Tribunal from whose decree the appeal is preferred but who has not been made a party to the appeal is interested in the result of the appeal, the Court may adjourn the hearing to a future date to be fixed by the Court and direct that such person be made a respondent.

CHAPTER V

MISCELLANEOUS

43. *Registration of certain societies and companies under Indian Law.*--(1) Where the registered office of any society or company registered before the 15th day of August 1947, under the Societies Registration Act, 1860 (XXI of 1860), or the Co-operative Societies Act, 1912 (II of 1912), or the Indian Companies Act, 1913 (VII of 1913), is situated in the territory now forming part of West Pakistan but a majority of its members for the time being are resident in India, the society or company, as the case may be, may apply within one year from the commencement of this Act to the Registrar of Societies, Co-operative Societies or Componies, as the case may be, within the local limits of whose jurisdiction the majority of the members of the governing body as it was constituted on the 15th day of August 1947, reside or carry on business, for the recognition of the society or company as such in India.

(2) The Registrar, after making such inquiry into the matter as he deems fit, may either accord such recognition or refuse to do so.

(3) The order of the Registrar under sub-section (2) shall be final and shall not be called in question in any court.

(4) Where the Registrar accords recognition to a society, co-operative society or company, he shall cause necessary entries thereof to be made in his register and thereupon, notwithstanding anything to the contrary contained in any law for the time being in force or in any instrument, the society or the company, as the case may be, shall be deemed to have been formed and registered under the relevant law as in force in India, and every such society or company shall, among other matters, have the right to demand and receive any moneys due to it from any person residing or carrying on business in India.

44. *Bar of further applications in certain cases.*--Subject to the other provisions contained in this Act, where an application made by a displaced bebtor under section 5 or under sub-section (2) of section 11, or by a displaced creditor under section 13 has been dismissed, no further application for the same purpose shall lie.

45. *Amendment of applications*—Clerical or arithmetical mistakes in any application or in any schedule annexed thereto arising from any accidental slip or omission may at any time be corrected by the Tribunal, either of its own motion or on the application of any of the parties.

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46. *Service of notices.*—Every notice issued under this Act shall be served by registered post, acknowledgment due, unless the Tribunsl for reasons to be recorded, directs service in any of the other modes specified in Order V of the First Schedule to the Code of Civil Procedure, 1908 (Act V of 1908).

47. *Effect of failure on the part of displaced debtor to disclose certain matters.*—Where a displaced debtor has not mentioned in the relevant schedule to his application any debt owing by him or any property movable or immovable, belonging to him, whether such property is liable to attachment under the provisions of this Act or of any other law for the time being in force or not liable to attachment at all, nothing contained in this Act shall prevent—

(*a*) in the case of the debt, the creditor from instituting any proceeding for the recovery thereof under any law for the time being in force other than this Act ; and

(*b*) in the case of the property, from being attached or otherwise dealt with under any such law.

48. *Proceedings not to abate on death of debtor.*—Notwithstanding anything contained in this Act, no proceeding before a Tribunal shall be dedmed to abate by reason merely of the death of the debtor who is a party to the proceeding, and a decree may be passed notwithstanding the death and such decree shall have the same force and effect as if it had been passed before the death took place :

Provided that nothing contained herein shall be deemed to render the legal representative of the deceased debtor liable to satisfy the decree except to the extent to which any of the assets of the deceased debtor have devolved on him.

49. *Right of assignee of debt to apply under this Act.*—The assignee of a debt from a displaced creditor shall have no right to make any application under this Act, if the assignee is not a displaced person.

50. *Past transactions not to be reopened.*—If, before any application is made by the displaced debtor under this Act for the adjustment of his debts in accordance with the provisions hereof, the displaced debtor has fully satisfied any of his debts, the transaction shall not be reopened, and no refund shall be allowed to any such debtor by reason of anything contained in this Act.

51. *Displaced debtor not to be deemed insolvent.*—Notwithstanding anything contained in any law for the time being in force relating to insolvency, no displaced debtor shall be deemed to be insolvent or to have been adjudicated as such within the meaning of any law for the time being in force relating to insolvency by reason only of his applying to get his debts adjusted under this Act, and no proceedings in insolvency shall lie against a displaced debtor in respect of any debt incurred by him before the 15th day of August, 1947.

52. *Modification of compromises or arrangements between displaced banks and creditors.*—(1) Where in respect of a displaced bank, a compromise or arrangement has been sanctioned by the court under section 153 of the Companies Act, 1913 (VII of 1913), but in view of the

decrees passed by the Tribunal under this Act against it or in its favour in relation to any debt, it is not possible for the bank to give effect to the compromise or arrangement, it may apply to the court which sanctioned the compromise or arrangement, to modify it in such manner as to it may appear just.

(2) The High Court may, after giving notice to the shareholders and creditors of the bank in such manner as may be prescribed, modify the compromise or arrangement is such manner as it thinks fit.

53. *Communication of contents of decrees to prescribed authority.*—(1) Every Tribunal shall communicate to the prescribed authority, in such manner as may be prescribed, the amount of the prior charge declared under sub-section (3) of section 16, and shall also forward to it a copy of the decree passed on the application of a displaced debtor under section 5 or sub-section (2) of section 11 and also of any order passed under sub-section (5) of section 32, specifying the amount due to creditor mentioned therein on the date of the order.

(2) The prescribed authority shall scale down the debts reported to him in accordance with sub-section (6) of section 32 and shall, subject to any rules made in this behalf, meet the prior charge of the secured creditor in accordance with sub-section (2) of section 16 in the first instance and thereafter distribute the balance of the compensation available for distribution within the meaning of sub-section (10) of section 32 rateably amongst the other decree-holders whose decrees have been reported to him :

Provided that in making any such rateable distribution the prescribed authority shall have due regard to the provisions contained in sub-section (2) of section 33.

(3) The balance from the amount of the compensation payable shall be refunded to the displaced debtor.

(4) Any amount paid by the prescribed authority to any decree-holder under the provisions of this section shall, to that extent, be a valid discharge of the debt due by the displaced debtor.

54. *Application of the Limitation Act.*—Subject to the other provisions contained in this Act, the Indian Limitation Act, 1908 (IX of 1908) shall apply to the institution of any proceeding under this Act, and, for the purpose of determining and computing the period of limitation prescribed by that Act in relation thereto, every application made under this Act shall be deemed to be a suit for the purpose of that Act.

55. *Order XXXVIII of the First Schedule to Code of Civil Procedure not to apply.*—Nothing contained in Order XXXVIII of the First Schedule to the Code of Civil Procedure, 1908 (Act V of 1908), relating to arrest and attachment before judgment shall apply to any proceeding under this Act.

56. *Protection of action taken in good faith.*—No suit, prosecution or other legal proceeding shall lie against the Government or

any person, in respect of anything done or intended to be done by it or him in good faith in pursuance of this Act or of any rule or order made thereunder.

57. *Delegation of powers.*—The Central Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act may also be exercised by such officer or authority subordinate to the Central Government or by the State Government or by any officer or authority subordinate to the State Government as may be specified in the direction.

58. *Power of Central Government to make rules.*—(1) The Central Government may by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the provisions contained in sub-section (1), the rules so made may provide for all or any of the following matters, namely:—

(*a*) the additional particulars, if any, which an application under section 5, should contain;

(*b*) the form in which notices under this Act may be issued;

(*c*) the form in which applications under section 10 or section 13 may be made;

(*d*) the registers which should be maintained under this Act;

(*e*) the authorities required to be prescribed under this Act;

(*f*) the board or other authority to which any report under sub-section (2) of section 18 may be made and the matters which such board or other authority should take into accounts in making its report.

59. *Power of State Government to make rules.*—The State Government may, by notification in the Official Gazette, make rules providing for—

(*a*) the distribution of business amongst the various Tribunals within the State;

(*b*) the manner in which copies of documents produced before the Tribunals should be certified;

(*c*) the returns to be made by the Tribunals and the authorities to which they may be so made.

60. *Repeals.*—The Displaced Persons (Institution of Suits) Act, 1948 (XLVII of 1948) and the Displaced Persons (Legal Proceedings) Act, 1949 (XXV of 1949) are hereby repealed.

STATEMENT OF OBJECTS AND REASONS.

The Bill is designed mainly to give relief to displaced debtors in respect of liabilities incurred by them prior to their displacement from West Pakistan though remission of court fees has also been allowed to displaced creditors. A certain amount of relief was afforded to them by Acts XLVII of 1948 and XXV of 1949, but this was found to be inadequate.

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A thorough examination of the various problems involved had to be made with a view to affording displaced persons adequate and, at the same time reasonable relief in the matter of their indebtedness, consistently with the needs of their rehabilitation. The task of such examination was entrusted to the Hon'ble Sri Bind Basni Prasad, a Judge of the Allahabad High Court, and the present Bill is the outcome of his recommendations. In brief, the object of the Bill is to relate the payment of all premigration pecuniary liabilities of a displaced person to—

(*a*) his 'paying capacity'—an expression which has been defined after making liberal allowances in favour of the debtor; and

(*b*) the compensation which might be received by him in respect of his immovable property left behind in West Pakistan.

A decree under the law will thus consist of two parts, the first part being equivalent to and recoverable from the 'paying capacity' of the debtor, and the second part being equivalent to the balance of the total amount decreed and recoverable from the compensation if and when received by the debtor. The first part of the decree will, as a rule, be recoverable in instalments.

In respect of the second part of the decree, it has been accepted that the amount payable should be scaled down in the proportion in which the displaced debtor is able to obtain recompense in respect of his immovable property left behind in West Pakistan. Where no recompense is received, there will be no recovery of the second part of the decree.

Displaced debtors will have the right to apply, within a period of one year from the enactment of this Bill, for the reduction of debts due to creditors, in accordance with the provisions of this Bill. All pre-migration liabilities will be consolidated for the purpose, but it has been specially provided that nostigma of insolvency will attach to any one seeking relief under this law.

Certain additional reliefs, for example, remission of interest after August 15, 1947, exemption from arrest or attachment of properties, reduction of certain pre-migration liabilities like maintenance allowance, apportionment of liabilities in the case of joint debts, revision of decrees already passed with a view to bringing them into line with present legislation, etc., have also been provided; and in formulating these reliefs the needs of rehabilitation and the fact that displaced persons have been unable to derive benefit from properties left behind in West Pakistan have been given due weight. Although under the Act civil courts will be vested with jurisdiction, the Bill provides a simplified procedure for the determination of debts, and minimises the delay involved in a series of appeals and revisions. Debts of different categories—debts secured on immovable property, debts secured by pledge of movable property and simple debts—are dealt with differently. The respective circumstances governing such transactions have been taken into consideration, an attempt being made to temper contractual obligations with equity when both creditors and debtors have lost control over the properties offered as security.

Special provisions have also been made to enable displaced persons to be absolved, for a period of ten years, from further liability in respect of calls on shares in companies, an opportunity being given to them to have their partly paid up shares converted into a proportionate number of fully paid up ones. Conditions of contracts with insurance companies, which were more or less of a technical nature and which became incapable of fulfilment on account of circumstances beyond the control of the insured are declared to have no effect and the insured is given an opportunity of getting compensation for the losses which he has suffered. A special provision has also been made to enable displaced banks to have their existing schemes of arrangements sanctioned by High Courts under section 153 of the Indian Companies Act, 1913, modified, when, due to reliefs granted to their debtors under this Bill, they find it difficult to carry out their obligations under the schemes. Recognition of Societies and Companies registered in Pakistan has been provided for in case the majority of their members or shareholders have migrated to India.

AJIT PRASAD JAIN.

NEW DELHI;
The 9th August, 1951.

M. N. KAUL,
Secretary.